

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Telecommunications Relay Services And Speech-to-)	CG Docket No. 03-123
Speech Services for Individuals with Hearing and)	CC Docket No. 98-67
Speech Disabilities)	CC Docket No. 90-571

To: The Commission

REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION

Hands On Video Relay Services, Inc. (“Hands On”), by its counsel, and pursuant to FCC Rule Section 1.401, et seq., submits its reply to Sorenson Media, Inc.’s November 15, 2004 opposition to the petitions for reconsideration of the Commission’s report and order released July 30, 2004, *Telecommunications Relay Services*, FCC 04-137 (“FNPRM”), relating to the VRS speed of answer waiver. In support, the following is shown:

Sorenson opposes elimination of the waiver of the minimum answer speed criterion for VRS. Sorenson Opposition at 1-4. Sorenson bases its opposition to a minimum VRS answer speed requirement on the impracticality of meeting the requirement without compromising the quality of VRS. Sorenson Opposition at 1. The Commission should reject Sorenson’s argument.

First, although waiver requests of Commission rules must be given a hard look, the burden is on Sorenson to justify continuation of the waiver. Sorenson has offered no compelling evidence to justify continuation of the speed of answer waiver. Indeed, Sorenson offers no evidence whatsoever, only its generalized argument. That generalized argument is that if the waiver is ended, VRS quality will drop, either because VRS providers will have to cut back hours or hire low quality interpreters. Sorenson presents no facts to support these arguments. Indeed, the few facts Sorenson presents, supports the conclusion that a sufficient number of interpreters exist to handle VRS traffic.

Sorenson suggests that the VRS market is competitive and that consumers should have a choice between long wait times with what it alleges is its quality service, and shorter wait times with lower quality service. Sorenson's suggestion and the logic behind it is fallacious and disingenuous.

In reality, Sorenson's opposition appears to be an attempt to maximize its profits at the peril of VRS consumers. Sorenson touts that it is the largest provider of VRS. Sorenson Opposition at 1. And Sorenson suggests that its dominance is a product of the competitive VRS market. In reality Sorenson has accomplished this feat, not by offering the highest quality VRS service in a competitive market, but by the simple expedient of giving away thousands of TV set top boxes, which it calls the VP-100 videophone.

The VP-100 and similar videophone devices allow a VRS user to make and receive calls using a standard television set, rather than a computer and keyboard. This is not to denigrate that product. The device and similar devices plainly have substantial utility for the deaf and hard of hearing. However, Sorenson has captured a majority of the VRS market by limiting the use of the VP-100 videophone solely to its system, by blocking the ability of VRS users to access other VRS providers, and even by prohibiting a VRS user to receive an incoming VRS call from any provider other than Sorenson. We understand further that Sorenson does not allow its VP-100 customers to make point to point calls to other videophone users not on the Sorenson system.

Sorenson's practices increase the barriers for the deaf, hard of hearing and hearing users of VRS. Although there are certainly anticompetitive and antitrust issues with these restrictions that the Commission and the courts should address, what they mean in the context of the speed of answer waiver, is that Sorenson users do not in the short run have the ability to use another VRS provider if Sorenson's service is inadequate. The user would have to terminate his relationship with Sorenson,

turn in his VP-100, obtain a videophone on the open market or from one of Sorenson's competitors, or purchase a computer system for VRS use before he could use another VRS service provider.

The restrictions Sorenson puts on use of its VP-100s have granted the provider substantial market power over VRS traffic. And Sorenson guards that market power zealously. Indeed, counsel for Sorenson recently wrote counsel for Hands On to threaten legal action as a result of what Sorenson alleged were efforts by Hands On to interfere with its exclusive relationship with its VRS VP-100 users. There can be no doubt that Sorenson's market power enables it to profit even though its average answer speed is substantially above that of its competitors.¹ Although Sorenson does not publicly report its average answer speed, anecdotal evidence suggests that Sorenson customers must

¹ Sorenson advises this Commission that it should value access over functional equivalence. Sorenson Opposition at 3. If that is Sorenson's true position, it should stop blocking its users from accessing competing VRS providers. This is not just a competitive beef; it is a matter of safety of life and property. Indeed, many deaf and hard of hearing persons have abandoned their TTYs and replaced them with videophones, in most cases with the VP-100s, under the dangerous illusion that VRS will give them immediate access to the public phone system for emergency calls. One day someone will die trying to place an emergency call while waiting 20 minutes to get a Sorenson interpreter. This is perhaps the most important reason why the speed of answer waiver is contrary to the public interest. It deprives deaf and hard of hearing persons with the immediate lifeline that hearing persons have via the public telephone network.

wait several minutes to be connected with a video interpreter. In fact, Hands On has heard reports of instances of waits as long as 20 to 30 minutes, and even longer.

In light of these facts, the Commission should take Sorenson's suggestion that competition will ensure adequate provider answer speeds with a grain of salt. Plainly, Sorenson simply would rather force VRS users to wait for an interpreter, rather than forego the profits it makes by employing fewer interpreters than necessary to reduce waiting time.

Sorenson's assertion that there are not enough qualified interpreters available to handle all the VRS traffic at an acceptable answer speed is not only unsupported, it is simply wrong. Sorenson states -- without citation -- that there are only 4,900 certified ASL interpreters, nationwide. Sorenson's number is highly suspect. RID's website shows that its membership of RID or NAD certified interpreters is 5,218.² In addition, RID lists some 3,044 non-certified associate members.³ Of those associate members, 1,626 state they are free-lance interpreters. Presumably the bulk of the other 1,418 are employed full or part time. Many of these associate members have state interpreter

² This information is drawn from RID's on line database of interpreters. See http://filemaker.rid.org/FMPro?-db=wmember.fp3&-lay=web&-format=search_mbr.htm&-view. RID also reported that its membership as of July 2003, more than a year ago, was 4,424 certified interpreters, 3,501 non-certified interpreters and 1,235 students studying interpreting at least part time. See <http://www.rid.org/faq.html>. The fact that there were more than 1,200 persons studying interpreting as of a year ago is most encouraging. That number is likely to increase as opportunities increase in interpreting due to the increase in demand for VRS and VRI. In addition, RID reported to Hands On that more than 1100 persons have taken the written certification test, 500 of which have passed the written test and are waiting to take the performance test for certification, and 620 more have passed the written test and have taken the performance test and are merely waiting the results of the performance test. RID also explained that the number of person testing with it has doubled over the past five years.

³ An associate member is defined as a person engaged in sign language interpreting who does not possess an RID or NAD certification. See <http://www.rid.org/memapp.pdf>.

certifications rather than RID or NAD. Thus, Sorenson has vastly understated the available pool of sign language interpreters.⁴

⁴ In fact, the Bureau of Labor Statistics reports that **“interpreters and translators held about 24,000 jobs in 2002. Because of the large number of people who work in the occupation sporadically, however, the actual number of interpreters and translators is probably significantly higher. Many who freelance in the occupation work only part time, relying on other sources of income to supplement earnings from interpreting or translation.”** See <http://bls.gov/oco/ocos175.htm>. Although this number includes foreign language interpreters as well, it serves to illustrate that there is a large pool of interpreters, including sign language interpreters, who are underemployed and who thus are available to handle increased demand for ASL interpreting.

Even assuming Sorenson's inaccurate estimate of sign language interpreters were true, it requires merely from 414 to 434 interpreters nationwide to handle 1,000,000 minutes of traffic in a 30 day month with an occupancy rate of 43 percent.⁵ That is only approximately 8.9 percent of Sorenson's apparently deficient estimate of available interpreters. Although Sorenson makes a good point concerning exhaustion of available interpreters in communities where more than one call center is located, it appears that Sorenson has chosen as a corporate policy to locate call centers in cities with existing VRS call centers, therefore, contributing to the interpreter shortage it decries. That actually, as we understand it, is the complaint CSD has with Sorenson. *See* Sorenson Opposition at 2. For example, Sorenson has opened call centers in Austin, Texas and Minneapolis, MN where CSD has existing VRS call centers, and in the San Francisco Bay area where Hands On

⁵ This calculation is based on an average call length of five minutes conversation time, with one and one half minutes combined set-up and wrap up time, 80 percent of calls answered within 30 seconds, and a maximum occupancy percentage of 43 percent in any two hour segment. Answer speeds down to 10 seconds do not increase the number of interpreters required due to the maximum 43 percent utilization level. Twenty-four hour service is also assumed. Call distribution data on an hourly and daily basis is based on past Hands On operational data, except for late night hours in which Hands On currently does not operate. For those hours, data is interpolated from actual operational data. The actual calculations will be made available upon request to the Commission, subject to a request for confidential treatment.

recently opened a call center. Thus, perhaps Sorenson should reexamine its own corporate policies in order to alleviate shortages in community interpreting.⁶ Sorenson has also announced it will open a call center in San Diego where Hands On has also is in the process of opening a call center.

Hands On has not found a lack of interpreters to be the chief cause for inadequate answer VRS speeds. The interpreters are available as evidenced by the more than 1,200 students who last year were studying to become sign language interpreters. However, the funds need to be available to pay these interpreters. Indeed, Hands On lost several interpreters following the Bureau's slashing of the 2003-04 VRS rate. That rate reduction caused a decided drop in morale among interpreters who now are distrustful of compensation levels, job security and the industry's commitment to safe working conditions due to a perceived lack of stability in VRS funding. If the Commission wishes to encourage a sufficient supply of interpreters, it should set a reasonable answer speed and acknowledge that utilization levels in excess of 45 percent exceed safe working conditions.

To the extent that an interpreter shortage ever does develop, and we suggest that is unlikely to occur, the Commission can always consider a limited waiver or relaxation of the speed of answer requirement. Hands On suggests, however, that institution of an answer speed requirement will spur

⁶ The purpose of Sorenson's policy appears to be to raid trained interpreters from other VRS providers rather than to recruit and train them itself, thus saving recruiting and training costs.

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Certificate of Service

I, David Crawford, do hereby certify that copies of the foregoing Petition for Reconsideration were sent on this 24th day of November 2004, via first-class mail, except where noted, postage pre-paid, to the following:

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